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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BYFORD "PETER" WHITTINGHAM, an
individual,

Plaintiff,

vs.

THE STATE OF NEVADA, ex. rel. NEVADA
ATTORNEY GENERAL'S OFFICE, a
Subdivision of the State of Nevada,

Defendant.

CASE NO. 2:20-cv-00811-GMN-EFY

**STIPULATION AND ~~PROPOSED~~ ORDER
EXTENDING TIME TO RESPOND TO THE
PLAINTIFF'S REVISED FIRST AMENDED
COMPLAINT (ECF 49)**

(SECOND REQUEST)

Defendant, NEVADA ATTORNEY GENERAL'S OFFICE by and through their attorneys, AARON D. FORD, Attorney General for the State of Nevada, MICHELLE DI SILVESTRO ALANIS, Supervising Senior Deputy Attorney General, and GERALD L. TAN, Deputy Attorney General, and Plaintiff, BYFORD "PETER" WHITTINGHAM, by and through his attorneys, JENNY L. FOLEY, ESQ. and DANA SNIEGOCKI, ESQ. of HKM Employment Attorneys LLP. hereby stipulate pursuant to LR IA 6-1, LR IA 6-2 to an extension of time for Defendant to respond to the Revised First Amended Complaint. This is the second request to extend the time to respond to the Revised First Amended Complaint.

On May 18, 2021, Plaintiff filed his Revised First Amended Complaint against Defendants

1 Attorney General's Office, David O'Hara, and Jane Doe. (RFAC) (ECF No. 49).

2 On May 26, 2021, Defendants' counsel notified Plaintiff they would accept service for Defendant
3 O'Hara. On June 2, 2021, Defendants' counsel accepted service of the Revised First Amended Complaint
4 for David O'Hara¹ (ECF No. 51).

5 On June 11, 2021, this Court granted the parties stipulation and order extending time to Answer
6 or Otherwise Respond to the RFAC. (ECF No. 53).

7 On June 25, 2021, Defendants filed their Motion to Dismiss Revised First Amended Complaint.
8 (ECF No. 54). On July 9, 2021, Plaintiff filed his Opposition. (ECF No. 55). On July 20, 2021, Defendants
9 filed their Reply in Support of the Motion to Dismiss (ECF No. 56).

10 On July 28, 2021, this Court granted the parties stipulation to stay discovery until a ruling on
11 Defendants' Motion to Dismiss. (ECF No. 60). This Court further ordered the parties to file within 10
12 days of the Order a revised proposed discovery plan and scheduling order. *Id.*

13 On January 27, 2023, this Court issued its Order granting in part and denying in part Defendant's
14 Motion to Dismiss. (ECF No. 64). Specifically, the Court denied the Motion to Dismiss with respect to
15 the First Cause of Action for Retaliation under Title VII against the AGO. *Id.* The Court granted the
16 Motion to Dismiss on the Second and Third Causes of Action against Defendants O'Hara and Jane Doe
17 and denied leave to further amend. *Id.*

18 On February 2, 2023, the parties conducted a meet and confer on the revised proposed discovery
19 plan and scheduling order.

20 On February 6, 2023, the parties filed their stipulated revised discovery plan and scheduling order.
21 (ECF No. 65). This Court granted the discovery plan and scheduling order. (ECF No. 66).

22 Pursuant to FRCP 12(a)(4), a responsive pleading would have been due February 9, 2023. As a
23 result of excusable neglect, this deadline was missed.

24 On February 16, 2023, immediately upon realizing this error, counsel for Defendant contacted
25 opposing counsel to discuss a stipulation for extension of time. Opposing counsel graciously agreed to
26 this stipulated extension.

27 As this request comes after the deadline, Defendant is including the analysis of the four factors in

28 ¹ The Causes of Action against Defendant O'Hara have since been dismissed. (ECF No. 64)

1 *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 113
2 S.Ct. 1489, 123 L.Ed.2d 74 (1993).

3 First, the stipulated extension does not prejudice the Plaintiff. The parties have already conducted
4 a meet and confer on discovery and are both working in good faith on discovery and have had ongoing
5 discussion regarding resolution. Second, the length of the delay was one week and does not impact the
6 judicial proceedings as the parties have only just begun discovery. Third, unfortunately, after the Court's
7 order on the Motion to Dismiss, Defendant ensured the parties conferred and worked on the outstanding
8 discovery and related orders; however, the deadline for the responsive pleading was not discussed. As
9 noted in the revised discovery plan and scheduling order, Defendant currently has several vacancies
10 which increases the professional commitments. Fourth, Defendant has acted in good faith and
11 immediately contacted Plaintiff upon this discovery. Based on the foregoing factors, Defendant's counsel
12 submits that this request for an extension of time after the deadline is the result of excusable neglect.

13 Further, in addition to the professional commitments noted above, Defendant's counsel requires
14 a longer extension of time because the Attorney General's Office has a new First Assistant Attorney
15 General, who in his role, would likely need to review the present litigation and pleadings, including
16 Defendant's Response to the RFAC. As the court is aware the RFAC includes approximately 22 pages
17 of factual allegations against the Defendant that require counsel significant time to review and to properly
18 gather information to respond to the RFAC adequately and accurately.

19 Therefore, based on the foregoing the parties stipulate and agree through their respective counsel,
20 that this Court grant Defendant an extension of time, up to and including March 17, 2023, to file an
21 answer or otherwise respond to Plaintiff's Revised First Amended Complaint.

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This request is made in good faith and not for purposes of delay.

DATED: February 16, 2023.

DATED: February 16, 2023.

AARON D. FORD
Attorney General

HKM Employment Attorneys. LLP

By: /s/ Michelle Di Silvestro Alanis
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[Permission to sign electronically received in
writing]

ORDER

IT IS SO ORDERED.

DATED this 16th day of February, 2023.


ELAYNA J. YOUCHAK
UNITED STATES MAGISTRATE JUDGE